

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYRONE CURTIS HARBIN,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

TYRONE CURTIS HARBIN,

Respondent-Appellant.

UNPUBLISHED

March 31, 2011

No. 296148

Wayne Circuit Court

Family Division

LC No. 08-478887

Before: MURPHY, C.J., and STEPHENS and M.J. KELLY, JJ.

STEPHENS, J. (*DISSENTING*).

I write briefly to dissent from the well-written opinion of the majority. Specifically, I write to urge reversal of the trial court based upon a deprivation of due process. The majority has outlined the intemperate remarks of the judicial officer throughout the trial. While the number and nature of those comments are concerning, I agree that those remarks do not rise to the level of evidence necessary to overcome the heavy presumption in favor of judicial impartiality. However, the trial court's action in depriving respondent the opportunity for closing argument, coupled with his interference with trial counsel's cross examination, deprived the respondent of the opportunity to present a defense in this quasi-criminal proceeding. We must be mindful that the finding in this case has the same impact on the child respondent as a criminal conviction would have for an adult. It is for this reason that this Court has found that juveniles possess most of the due process rights that are possessed by adults in criminal cases. *In Re Wilson*, 113 Mich App 113, 121-122; 317 NW2d 309 (1982).

The majority notes correctly that a party may rest their case without cross-examination pursuant to MRE 2.507(E). However, the court rule cited supports the right of the party to waive the right to closing argument. The court may limit closing argument, but is not possessed of the right to preclude closing argument. *People v Thomas*, 390 Mich 93, 95; 210 NW2d 776 (1973). In *Thomas*, The trial judge's preclusion of closing argument was the basis of a reversal because of its substantial due process affect.

Defendant Thomas was erroneously denied an essential element of his due process right to a hearing and of his right to the assistance of counsel when the trial judge would not allow his attorney to make a closing argument. Moreover, we also find that the trial judge erroneously disregarded his position as an impartial fact finder by finally settling his mind before defense counsel was given an opportunity to review the facts from defendant's point of view. [*Id.*]

In this case, counsel only indicated that he had no more questions for the witness when the referee impatiently asked, "Are we done with this?" Consequently, no waiver occurred. We can only speculate as to what the results of fuller examination of the respondent might have been. We are left to guess what the closing argument might have been. Had the trier of fact been a jury they would have received instructions to withhold judgment until after all of the evidence was presented, arguments were made and instructions were given. A bench trial certainly justifies a failure to articulate the law applicable to this quasi criminal charge. However, the record was not fully developed. "A person's right to reasonable notice of the charge against him, and an opportunity to be heard in his defense -a right to his day in court- are basic to our system of jurisprudence" *In Re Oliver*, 333 US 257, 273; 68 S Ct 499; 92 L Ed 682 (1948). The fact that the trial court was responsible for the deprivation of closing argument was a plain error that affected a substantial right. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009). This deprivation "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Carines*, 460 Mich 750, 774; 773; 597 NW2d 130 (1999). Consequently, I would reverse.

/s/ Cynthia Diane Stephens